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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/720,273	12/21/2000	Thomas Eckel	MO-6034/LEA3	9983

157 7590 02/13/2003

BAYER CORPORATION  
100 BAYER ROAD  
PITTSBURGH, PA 15205

EXAMINER
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SZEKELY, PETER A

ART UNIT	PAPER NUMBER
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1714

DATE MAILED: 02/13/2003

10

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/720,273	ECKEL ET AL.	
	Examiner	Art Unit	
	Peter Szekely	1714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 December 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5, 9, 10, 12-15 and 19-22 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 9, 10, 12-15 and 19-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1-5, 9, 10, 12-15 and 19-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mitsubishi chemical Corporation EP 0 728 811, in view of Witmann et al. 4,937,285, Eckel et al. 5,126,404 or Witman et al. 5,552,465.
3. All the references have been discussed already. It would have been obvious to one having ordinary skill in the art, at the time the invention was made, to use the ABS resin prepared by the process of the secondary references, in the composition of Mitsubishi in order to take advantage of the improved light stability, toughness and thermoplastic-elastic properties. See, Witmann et al. ('465), column 4, lines 36-39 and Witmann et al. ('285), column 4, lines 1-15.

### ***Response to Arguments***

4. Applicant's arguments filed 12/16/02 have been fully considered but they are not persuasive. Whether Mitsubishi teaches away from the use of non-phosphazene phosphorus compounds or not, is completely immaterial. Applicants' invention is obvious, because it is advantageous to replace the graft polymer of the primary reference, with the graft polymer of the secondary references, regardless of the other ingredients. The improvement in light stability, toughness and thermoplastic-elastic properties is does not depend on and is not influenced by the choice of flame retardants. Furthermore, Mitsubishi does not teach away using other phosphorus

containing flame retardants in combination of phosphazenes. It only teaches that other phosphorus containing compounds should not replace phosphazenes. The "comprising" language of the claims and the mention of "other flame retardants on page 5, lines 17-19, clearly shows that other flame retardants are contemplated. However, since there is nothing in the secondary references to state, or to imply, that the choice, or presence of flame retardants influences the improved light stability, toughness or thermoplastic-elastic properties of the resulting composition, the question of "teaching away from the use of non-phosphazene flame retardants" is totally irrelevant. The rejection is maintained.

#### ***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the

Art Unit: 1714

examiner should be directed to Peter Szekely whose telephone number is 703-308-2460. The examiner can normally be reached on Tuesday-Friday 7:00 a.m.-5:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on 703-306-2777. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



Peter Szekely  
Primary Examiner  
Art Unit 1714

P.S.  
February 10, 2003

**NOTE:**

The Declaration of Dr. Eckel has no probative value, because it does not show that the physical properties of the compound deteriorate, when phosphates are added to a phosphazene containing polycarbonate/ABS formulation. Repeating the allegation, that Maruyama et al. teach away from the use of phosphates for the third time, does not make it any more convincing than it was in last August when applicants tried this line of argument first. The reference teaches away from the replacement of phosphazenes with phosphates, not the addition of them on top of the phosphazenes. Maruyama et al. invite the use of additional flame retardants and there is nothing in the reference suggesting that this additional flame retardants cannot be phosphates. The advantages of applicants' process where a hydroperoxide and ascorbic acid are comprising the initiator system is well documented by the secondary references. The obviousness rejection is maintained.

A handwritten signature in black ink, appearing to read 'Peter Szekely', with a stylized, cursive script.

**PETER SZEKELY  
PRIMARY EXAMINER**